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PETITION OF

COX VIRGINIA TELCOM, INC.

CASE NO. PUC-1999-00110

**For approval of relocation
of network interface device
to minimum point of entry**

REPORT OF HOWARD P. ANDERSON, JR., HEARING EXAMINER

July 22, 2002

On June 9, 1999, Cox Virginia Telcom, Inc. ("Cox") filed a Petition on behalf of Breeden Company and PGR Real Estate (collectively, "Complainants") alleging that Bell Atlantic-Virginia, Inc. (n/k/a Verizon ("Verizon")) failed to comply with the Complainants' requests to reconfigure Verizon's existing network wiring at seven specific multiple dwelling units ("MDU") properties and to install a cross-connect facility that would allow competitive access to each of the MDUs owned by the Complainants. The Complainants requested the Commission award them the following relief:

1. Order Verizon to comply with Rule B7, 20 VAC 5-400-20¹ by relocating each living unit's Network Interface Device ("NID") unit to a Minimum Point of Entry ("MPOE");
2. Order Verizon to charge Complainants no more than reasonable time and materials for the relocation;
3. Order Verizon to convey to Complainants all of the intra building network cabling for a price no greater than its fully depreciated net book value;
4. Order Verizon to furnish and install, on an expedited basis, such NIDs at the MPOE that will facilitate cross-connection by Cox and any other competitive local exchange company ("CLEC") authorized in the future to cross-connect on the premises of Breeden Company and PGR Real Estate;
5. The Commission determine the reasonable rates and charges for the requested services and facilities provided by Verizon; and
6. Enjoin Verizon from refusing, failing to furnish and install, or impeding the reengineering and reconfiguration of Complainants' telecommunications facilities.

¹Currently Rule 20 VAC 5-401-30 C1 and C2.

On July 30, 1999, the Commission issued a Preliminary Order docketing the case, directing Verizon to respond to Cox's Petition, directing Cox to reply to Verizon's responsive pleading, and continuing the matter generally. On August 25, 1999, Verizon filed a Motion to Dismiss and Answer arguing that neither the Commission's NID Rules² the Federal Communications Commission's ("FCC") Rules, nor Verizon's tariffs require the relief requested. Verizon averred that the Commission's NID Rules apply only to the placement of NIDs for new installations. Verizon further denied it was in violation of FCC Rules or its own tariffs because they do not apply to existing NIDs. Verizon requested that the Commission dismiss the Petition and denied that it is required to comply with the relief requested in the Petition.

Cox filed its Response on September 15, 1999 challenging Verizon's contention that the NID Rules apply only to new construction. Cox claims that FCC NID Rules³ allow building owners to rearrange their wiring and determine the number and location of NIDs as requested in the Petition. Cox renewed its request that the Commission direct Verizon to relocate the NIDs as requested by the MDU owners.

On May 7, 2001, the Commission issued an Order Directing Joint Statement of Issues to be Filed in which it denied Verizon's Motion to Dismiss and directed the parties to pursue a negotiated settlement. In the event a settlement could not be reached within one month, the parties were directed to file a joint statement of remaining issues with supporting information.

On July 12, 2001, Cox filed a Motion for Leave to Amend Statement of Issues ("Motion to Amend"). In support of its Motion to Amend, Cox stated that the amended statement of issues would clarify the manner in which the MPOE and demarcation rule apply to the present case.

On August 6, 2001, the Commission issued an Order Assigning Hearing Examiner in which, among other things, it accepted Cox's Amended Statement of Issues and set forth the issues identified by the parties. These issues are as follows:

1. While the parties do not agree on whether Verizon is legally required to remove the demarcation point to the MPOE for garden-style apartments at the request of the property owner, Verizon has agreed as a business matter that it will do so.
2. Should the property owner and/or Cox be allowed to minimize its costs by (a) providing some equipment and/or (b) participating in the actual move of the wiring to a neutral cross-connect box?
3. Is the proper determination of Verizon's cost to the property owner for this conversion of wiring from network to inside wire based on the net book value (original cost less depreciation) for such facilities, including cable, terminals, closures, etc., as well as reasonable materials and labor costs

²The Commission adopted Amended Rules Governing the provision of NIDs in Case No. PUC-1983-00039, Final Order issued December 17, 1985 (20 VAC 5-400-20).

³47 C.F.R. Section 68.3 (b) (2).

- incurred to make the rearrangement, including any extraordinary costs incurred to expedite requests, when appropriate?
4. Should the property owner reimburse Verizon the entire amount of the cost determined by the approved methodology, or should Verizon absorb part or all of the costs of the conversion?

Cox also submitted in its Statement of Issues a list of seven additional disputed or open issues. The Commission determined that the additional disputed or open issues were untimely and would impede the adjudication of the case. The Commission did note, however, that the issues raised by Cox may be of industry-wide concern and could more appropriately be addressed in a rulemaking proceeding. Finally, the Commission assigned a Hearing Examiner to the case to conduct further proceedings and make a recommendation regarding the initiation of a rulemaking and the scope for such an investigation.

DISCUSSION

Representatives of Cox and Verizon met on January 25, April 25, and May 24, 2002. E. Ford Stephens, Esquire, and Jill Butler attended on behalf of Cox. David Ogburn, Esquire, and Joe Drust appeared on behalf of Verizon. Steve Bradley of the Commission's Division of Communications and Don Mueller of the Office of General Counsel also participated in the meetings. The meetings were conducted in an effort to resolve the issues in an informal manner.

A third meeting was set for July 9, 2002; however by letter dated July 8, 2002, Cox requested that this matter be dismissed without prejudice. Cox noted that many of the issues contained in the Commission's August 6, 2001, Order and Cox's additional disputed or open issues are relevant to the telecommunications industry in Virginia and remain unresolved. Cox requests that its Petition be dismissed without prejudice to Cox's ability to raise these issues in a subsequent proceeding.

Cox explained in its letter that Cox filed its Petition seeking to have Verizon reconfigure its existing network wiring at seven specific MDU complexes. At that time, Cox had concluded that the most efficient and cost-effective method of accessing the MDUs was to establish an MPOE close to the perimeter of the property that Cox could use to provide service to the individual units. During the course of this proceeding, Cox recognized that it could gain more efficient access to the individual units by using its existing cable television assets through the establishment of a new MPOE.

As a result of the meetings held on January 25, April 25, and May 24, the issues set forth by the Commission for resolution in this proceeding were largely resolved or rendered moot. As to the first issue, Verizon agreed that, as a business matter, it would remove the demarcation point to the MPOE for garden style apartments at the request of the property owner.⁴ Verizon found that, in regard to the second issue, its union contracts prohibited non-union personnel from participating in the actual move of the wiring to a neutral cross-connect box. As noted above, Cox was able to gain access to the MDUs using its cable assets, thus not requiring the relocation of the MPOE.

⁴There was no agreement that Verizon is required by law to remove the demarcation point to the MPOE.

The Commission, in its Order of August 6, 2000, denied Cox's request to include seven additional issues in this proceeding finding that the additional issues were untimely and would impede the adjudication of this case. Noting, however, that the additional issues raised by Cox may be of industry-wide concern, the Commission directed that a determination be made as to whether the issues should be addressed in a rulemaking proceeding.⁵

The issues are:

1. Is Verizon legally required to arrange for the removal of demarcations from individual units back to the property's MPOE or to an intervening point designated by the landlord/agent or the MDU within 45 days of receiving such request?
2. In a significant number of existing MDUs, the demarcation point is in each apartment. In this situation, typically Verizon has a pedestal close to the place where the building wiring emerges from the building and it is difficult for Cox to gain access to such wiring. In these situations, should Verizon be required to have a neutral cross-connect box installed to make that building wiring (at each Verizon pedestal) accessible to Cox or to convert its pedestal into a neutral cross-connect box? If so, how should the costs of such installation be determined, and who should bear those costs?
3. Which, if any, of Verizon's tariff provisions are applicable to the relocation of demarcations to the MPOE?
4. Are there any Metrics⁶ in Case No. PUC-2000-00035 that apply to Verizon's furnishing MDU access to CLECs?⁷
5. In all new MDU installations, should Verizon provision the wiring so that there is a neutral cross-connect box at the property or building MPOE and such MPOE is the point of demarcation? Should Verizon also get the owner of the property to affirmatively agree that the demarcation point should be placed in a particular place (e.g. at each building or at the MPOE of the property)?
6. What is an appropriate price for an unbundled sub-loop? What terms and conditions should apply to leasing such a sub-loop?
7. Should any decisions made in this case applying to Verizon Virginia also apply to Verizon South, Inc.?

⁵Order at 2, 3.

⁶There are no metrics in Case No. PUC-2000-00035 that apply to Verizon's furnishing MDU access to CLECs.

⁷Cox Motion for Leave to Amend Statement of Issues at 7.

To date, no other petitions concerning the matters listed above have been filed. Further, no other CLECs asked to become involved or expressed an interest in this proceeding. Cox, in its letter of July 8, 2002, requests that this Petition be dismissed without prejudice to Cox's ability to raise these issues in a future proceeding. I find a generic rulemaking is unnecessary at this time. With the exception of Cox, no other CLEC has sought relief regarding the matters set forth above. The appropriate remedy would be for Cox to file a petition regarding the issues that are still pertinent. Accordingly, I recommend that this matter be dismissed without prejudice.

COMMENTS

The parties are advised that any comments (Section 12.1-31 of the Code of Virginia and 5 VAC 5-20-120 C) to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen (15) copies, within twenty-one (21) days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been mailed or delivered to all counsel of record and any such party not represented by counsel.

Respectfully submitted,

Howard P. Anderson, Jr.
Hearing Examiner